

## **SECTIONAL ANALYSIS FOR TELECOMMUNICATIONS LEGISLATIVE PROPOSALS IN THE PRESIDENT'S FY 2010 BUDGET**

### **SECTION 1. Permanent Extension of Auction Authority.**

As part of the DTV Delay Act, Pub. L. No. 111-4, the Federal Communications Commission's (FCC) spectrum auction authority was extended through September 30, 2012. Section 309(j) of the Communications Act of 1934 establishes the FCC's auction authority and paragraph (11) currently states that the entire section sunsets on September 30, 2012. The new section provides the FCC with permanent authority to assign licenses via auction (competitive bidding) by repealing paragraph (11) of section 309(j) in its entirety. Spectrum auctions have proven to be an efficient method for assigning licenses or permits for certain spectrum-based services; and, as noted by the Government Accountability Office (GAO-06-236) and others, strong support exists for extending the FCC's auction authority. Making the FCC's auction authority permanent allows for more certainty in the auction-planning process and will promote continued growth in the wireless sector.

### **SECTION 2. Authority to Establish Spectrum License User Fees.**

This section creates a new subsection (m) under section 309 of the Communications Act of 1934, which provides the FCC with authority to establish, assess, and collect fees for initial spectrum licenses and construction permits that were not assigned by auction (competitive bidding) under section 309(j) and for renewals of initial licenses and other authorizations, whether granted through competitive bidding or not. Fee authority will assist the FCC in managing the spectrum efficiently in cases in which auctions are prohibited or may not be an appropriate assignment tool but in which it is important to ensure that license holders pay the opportunity costs of their spectrum use.

Paragraph (1) of new subsection (m) governs the FCC's development of regulations to implement its fee authority. Subparagraph (A) requires the FCC to conduct a rulemaking to establish a fee methodology and a fee collection schedule. The FCC is directed to develop a fee methodology consistent with the public interest, convenience, and necessity requirement, which is found throughout the Communications Act. The FCC is expected to undertake a multi-stage rulemaking during which fees for different classes of spectrum licenses or construction permits may be developed and phased-in over time, consistent with sound spectrum management principles. It is expected that fees would encourage efficient allocation and use of the radio spectrum, as the opportunity cost of spectrum resources would be reflected to commercial license holders that did not receive authorizations through competitive bidding.

The proposal specifies that the FCC may take the following factors into account when developing a fee methodology: (1) the highest value use of the spectrum that is foregone by the license or class of licenses or construction permits (i.e., the opportunity cost of spectrum use); (2) the scope and type of permissible services and uses; (3) the amount of spectrum and licensed coverage area; (4) shared versus exclusive use; (5) the level of demand for spectrum licenses or construction permits within a certain spectrum band or geographic area; (6) the amount of

revenue raised on comparable licenses awarded through auction; and (7) such other factors that the FCC determines, in its discretion, are necessary to promote efficient and effective spectrum use. These factors may assist the FCC in determining which classes of spectrum licenses and construction permits should be subject to user fees and in developing a methodology that addresses the relative value of the spectrum to different classes of users. The FCC may consider other factors that may be raised during the rulemaking process. The FCC may also determine that certain classes of licenses or permits should be exempt from fees.

Subparagraph (B) requires the FCC to conduct a rulemaking to establish a fee methodology and a fee collection schedule for entities holding Ancillary Terrestrial Component (ATC) authority on Mobile Satellite Service spectrum licenses. The FCC is directed to develop a fee methodology to collect an amount not less than a reasonable estimate of the value of the licenses over their term regardless of whether the spectrum is used for the ATC service. The FCC may take the same factors under subparagraph (A) into account when developing a fee methodology for the spectrum used for ATC service.

Subparagraph (C) directs the FCC to commence a rulemaking regarding fees as a spectrum management tool within 60 days of enactment of the Act. The FCC is also directed to take all actions necessary so that fees for first class or classes of spectrum licenses or construction permits can be collected by September 30, 2010.

Subparagraph (D) provides clarification that the FCC may modify the fee methodology or revise the rules implementing fees either through separate rulemakings, or as part of rulemakings or proceedings involving spectrum-based services, licenses, permits, and uses. Such modifications or revisions may add or modify classes of spectrum license or construction permit holders that must pay fees, and reflect appropriate increases or decreases in fees as a result of the addition, deletion, reclassification, or other change in a spectrum-based service or use, including changes in the nature of a spectrum-based service or use as a consequence of FCC rulemaking proceedings or changes in law. Such modifications or revisions can take effect upon the date established in the FCC's rulemaking or in the law.

Subparagraph (E) provides an exemption from spectrum licensing fees for holders of licenses for public safety radio services exempt from competitive bidding under subsection (j)(2)(A). The meaning of "emergency response providers" is derived from the definition of the term found in section 2(6) of the Homeland Security Act of 2002. Federal agencies are not FCC licensees and would not be subject to FCC fees.

Paragraph (2) directs the FCC to assess penalties for late payment of fees. Paragraph (3) provides the FCC with the authority to revoke a license or permit if the license or construction permit holder has failed to pay to the FCC the fee or penalty authorized under this subsection. Paragraph (4) creates a new Spectrum License User Fee account in the Treasury and requires that all proceeds collected by the FCC under this section of the legislation be deposited in this account and credited as offsetting receipts.

### **SECTION 3. Authority to Auction Licenses for Domestic Satellite Services.**

This section of the legislation creates a new subsection (17) at the end of section 309(j) of the Communications Act of 1934 to direct the FCC to use competitive bidding to assign orbital locations and spectrum used solely or predominantly for domestic satellite communications services, including satellite-based television or radio services. “Predominantly for domestic satellite communications services” is defined in this section as a service for which the majority of customers that may be served are located within the geographic boundaries of the United States. This new subsection also authorizes the FCC to assign licenses using an alternative approach if the use of the alternative approach would serve the public interest, convenience, and necessity.

Licenses for direct broadcast service (DBS) and satellite digital audio radio service (SDARS) space stations were assigned by auction prior to a 2005 court decision that found the section 647 of the ORBIT Act (47 U.S.C. § 765f) effectively prohibited DBS and SDARS auctions in light of FCC decisions permitting such licensees flexibility to provide service outside the United States. By clarifying through legislation that the FCC is authorized to use auctions to assign licenses for DBS and SDARS space stations and other satellite services the FCC deems predominantly domestic, prior policy of the FCC will be restored.

### **SECTION 4. Public Safety Interoperable Communications Grants.**

This section of the legislation would make the funds available for the administration of the Public Safety Interoperable Communications (PSIC) Grant Program available until expended. It would also authorize the National Telecommunications and Information Administration to extend the period of performance, on a case-by-case basis, of an investment approved under the PSIC Grant Program notwithstanding the statutory deadline of fiscal year 2010 (September 30, 2010) set forth in the authorizing legislation, section 3006 of the Deficit Reduction Act of 2005, Pub. L. No. 109-171. The draft legislation would, however, limit any extension to no more than two years.